



**Florida
Retail Federation**

THE VOICE OF FLORIDA RETAILING

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ OCT 09 2012 ★
BROOKLYN OFFICE

The Honorable John Gleason
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Gleason:

On behalf of the over 7,000 members of the Florida Retail Federation, I respectfully urge the court to reject the proposed settlement agreement in *In re Payment Interchange Fee and Merchant Discount Antitrust Litigation*, U.S. District Court for the Eastern District of New York, No. 05-1720. We have surveyed our membership regarding the proposed settlement, and the feedback we have received is unequivocal in its dismay. The proposed settlement offers retailers only nominal compensation, does not encourage transparency, and institutes a perpetual limitation of retailers' rights to seek redress in court. The proposed settlement is an inadequate and unjust solution to a longstanding problem.

In order to be competitive in today's marketplace, most merchants feel they must accept credit cards in order to meet the demands of consumers. In meeting this consumer demand, merchants pay billions of dollars every year in swipe fees. Merchants cannot negotiate these fees. The settlement as proposed offers some recompense, but it amounts to only pennies on the dollar. The settlement would offer a brief respite from rising swipe fees. However, following the eight month period of reduced rates, there is nothing in the settlement preventing Visa and MasterCard from raising rates to recoup lost funds.

The proposed settlement agreement will do nothing to encourage transparency or change the anti-competitive nature of the credit card industry. Visa and MasterCard set the fees that all banks that issue their cards agree to charge. Further, Visa and MasterCard do not disclose the specific swipe fee charged by each card. This allows Visa and MasterCard to maintain a stranglehold on the industry, leaving no room for merchants to negotiate or for market forces to operate. The much-touted provision that would allow vendors to surcharge is meaningless in Florida, where credit card surcharging is unlawful. (There was a significant push by the credit card industry in 2011 to extend Florida's prohibition on surcharging to debit cards also, which was thankfully defeated. We assert that while most businesses do not wish to charge their customers additional money, the ability to do so is a negotiating point which helps to keep debit transaction fees low.)

The proposed settlement agreement will require all merchants – even those not yet in existence - to relinquish all rights to file future claims against Visa and MasterCard. This will give Visa and MasterCard free rein to increase swipe fees in whatever manner they wish, unchecked due to the inability of merchants to seek redress of grievances in court for business practices they allege to be unfair and anti-competitive. The inability to petition the court is not only unfair, but it is also an abridgement of constitutional liberties.

The credit card industry is benefitting unjustly from anti-competitive practices, and the proposed settlement agreement does nothing to encourage long-term change. I respectfully urge you to reject the proposed settlement.

Sincerely,

A handwritten signature in black ink, appearing to read "R. McAllister", written over a horizontal line.

Richard A. McAllister
President and CEO
Florida Retail Federation